

7.1.1 Authority.

1. The Zoning Bylaw requires every lot to have frontage on a street as defined in the Zoning Bylaw (§ 135-10.0). The Bylaw has three classifications of streets: 1) a public way laid out and maintained by a public authority; 2) a way constructed in accordance with an approved subdivision plan; and 3) a way in existence on April 4, 1948, that has been determined to be adequate by the Planning Board. Adequacy shall be to provide a means for safe vehicular passage including public safety vehicles.

2. Street Adequacy. This third classification of "street" is not a permanent one as it relies on the determination of the Planning Board as to the status of the street at the time a building permit is sought. In order for a way in existence on April 4, 1948, to be categorized as a street, the Planning Board must make a determination that it has sufficient width, suitable grades, and adequate construction to allow vehicular traffic in relation to the proposed use of the land served by the way, and for the installation of municipal services to serve the land and the buildings erected, or to be erected, on that land.

3. This section of the Zoning Regulations sets forth the procedures and construction standards by which the Board will render its opinion on the adequacy of these ways. The Board's opinion shall be to protect public safety by providing sufficient vehicular access and does not have to meet full subdivision standards

7.2 OBJECTIVES.

7.2.1

Objectives. The Planning Board has adopted these Regulations for the following reasons:

- 1.** To extend the system of streets that are either accepted public ways or are constructed to Town standards in a manner compatible with the Town's complete streets policies;
- 2.** To set forth written standards and procedures for determining the adequacy of unaccepted ways to serve as frontage, in relation to the construction of new dwellings, for lots on such ways.

7.3 APPLICABILITY.

7.3.1 Regulated Activities and Length of Jurisdiction.

1. Regulated Activities. Until the Planning Board determines that the unaccepted street provides adequate frontage, no building permit may be issued for any lot on a way not accepted by the Town but in existence on April 4, 1948, for:

- a.** A new dwelling on a previously undeveloped lot; or
- b.** A new dwelling on a lot created through an Approval Not Required, Definitive Subdivision, Special Residential Development, or Open Space Residential Development;
- c.** An additional dwelling unit on a lot with existing dwelling(s), excluding accessory dwelling units; or

d. A change in use.

2. Regulated Activities requiring an administrative review. Any project resulting in the addition of 1,000 sf of GFA or replacement after demolition to a lot will be subject to a pre-construction and post-construction inspection by Planning and Engineering Staff to observe roadway conditions. The Applicant is responsible for any damage to the roadway caused by construction vehicles. The Applicant shall submit a performance guarantee to the Planning Office, that may be released upon confirmation from Planning and Engineering Staff that no roadway damages have been observed during their post-construction inspection.

3. Length and Direction of Jurisdiction. The Board will determine the adequacy of the way along the lesser distance of the entire frontage of the lot and either;

a. The intervening distance between the lot and the nearest accepted street; or

b. A length not greater than 200 feet, from the entire frontage of the lot in a direction determined by staff.

7.4 PERMITTING PROCESS.

7.4.1 Process Outline. Planning, Engineering, and Fire Department staff shall conduct an initial roadway evaluation to determine the needed scope of repairs to bring the road to an adequate standard to allow safe vehicular travel. The Planning Board issues its determination after an application is received, staff conducts a review of the proposal, and the matter is discussed at a public meeting with notification to abutters within 300 ft. of the subject property.

7.4.2 Action Deadline. The Planning Board must act on a street determination application within 45 days from the date of a complete submission unless extended per Section 3.3.6, or the application will be deemed constructively approved.

7.4.3 Decision. The Planning Board will determine that:

1. The unaccepted street presently is of adequate grade and construction and no improvements are necessary; or

2. The unaccepted street is not presently of adequate grade and construction but will be after certain improvements, proposed by the applicant, are made; or

3. The unaccepted street is not of adequate grade and construction and the improvements proposed by the applicant are not sufficient to change that determination.

7.4.4

Determinations are limited to the grade and construction of the street and should not be interpreted as implying that the lot under consideration meets any other test of the Zoning Bylaw to qualify it as a buildable lot.

7.4.5

1. Performance Guaranty. The Board will require a performance guaranty, as estimated by the Engineering Division to cover the costs of;
 - a. The construction and inspections, in accordance with Sections 6.5 and 6.6 of the Board's Subdivision Regulations, if the project requires a Street Adequacy Determination; or
 - b. The cost to repair potential damages to the unaccepted roadway caused by construction vehicles, if the project does not require a Street Adequacy Determination by the Planning Board.

7.4.6 Duration of Determination. Street determinations are valid for two years from the date the designation was voted by the Board.

7.5 REQUIRED IMPROVEMENTS AND DESIGN STANDARDS.

7.5.1 Same Standards as Subdivision Regulations. The improvements and design standards for improvements of unaccepted streets are the same as those found in Section 175-7.0 of the Subdivision Regulations and are incorporated here by reference. The Board may consider waivers from the Subdivision Regulations where unaccepted roads cannot be improved to full subdivision standards for reasons such as physical impediments or excessive financial cost. The minimum road width for two-way travel is recommended to be 20 feet. The road width may be waived by the Planning Board but is recommended to be at least 16 feet for two-way travel or as wide as sufficient for emergency vehicle access.

7.6 APPLICATION REQUIREMENTS.

7.6.1 Format of Plans and Documents. The format and the information required for any of the plans or other documents cited in this section are the same as those set forth in Chapter **175** of the Code of Lexington, the Subdivision Regulations.

7.6.2 Information Required. The information required for a street determination must be sufficient to depict the condition of the length of the street under review and must include the following items:

- 1.** Street construction plans. Street construction plans must depict the length of street as described in § 176-7.3.1.3 above, and are comprised of the sheets indicated below:
 - a.** A title sheet, § 175-6.1C(1). Land 100 feet back from the way for the length of the proposed improvements needs to be shown. It may be based on existing map resources

rather than a survey; not required: zoning district boundaries, and recorded easements abutting the tract;

b. A site construction plan, § 175-6.1C(4), except the following items are not required: the location and characteristics of open space, and proposed limit-of-work line;

c. A street layout plan and a street profile plan, § 175-6.1C(5); and

d. A utilities plan, § 175-6.1C(6).

2. A certified copy of a plan properly recorded before April 4, 1948, showing the layout of the way and evidence that the street has been in existence ever since.

3. An opinion of an attorney stating he/she has examined the deeds of the owner of the lot and of all others who have rights in the right-of-way and that the applicant has the legal right to make the improvements proposed to comply with these standards, including the construction of drainage facilities and subsurface improvements, and improvements to any intervening distance. The Board may require submittal of copies of the deeds of other property owners or a representative sample of those deeds (if they are similar) concerning the rights held by the (other) property owners in the right-of-way. A list identifying all waivers, if any, and the reason a waiver is requested. If the applicant seeks waivers from these Regulations, the Board requires that the waivers be listed on the site construction plan described above.

5. A statement of whether or not the applicant intends to petition to have the street accepted by the Town as a public street.

Applicants must include the fee set forth in Section 4.1.2.

7.7 CONSTRUCTION AND COMPLETION.

7.7.1 Same Rules as Subdivision Regulations. The procedures for the construction and completion of improvements to unaccepted streets are the same as Section 175-8.0 of the Subdivision Regulations and are incorporated here by reference. All road improvements must be observed by the Engineering Department, at the time of the improvement, and the improvements must be done to Town Standard or as described in the Planning Board's Street Adequacy Determinations in order for the performance guarantee to be returned.

7.7.2 Applicant shall provide direct abutters on the roadway being improved notification of the days and times of roadway work at least one week in advance.